**COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING**

[Chapter VIII, Rule 32 (2) (b)]

**Description of Case.**

**Appeal From Order No.982 of 2001**

Thapar Intra for Company Ltd. And another.

**Versus**

Smt. Sumitra Devi and another.

**A.F.R. (Approved for Reporting)**
~~Not Approved for Reporting~~

**(B.S. Verma, J.)**

**Date:** 09-05-2006 ***Initials of Judge***

**THE HIGH COURT OF UTTARANCHAL AT NAINITAL.**

**Appeal From Order No. 982 Of 2001**
Old 336 No. 650 of 1984

1. Thapar Intra for Company Ltd.
   Simlasu Tehri, District- Tehri Garhwal, through
   Its General Manager Shri G.S. Mukerjee.
2. Bishamber Nath, S/o Chunni Lal,
   Driver, C/o TICIL Simlasu, Tehri,
   Distrcit- Tehri Garhwal. … **Appellants**

***Versus***

1. Smt. Sumitra Devi, Widow of Govind Singh.
2. Ravindra Singh (Minor aged about 11 yrs) S/o Govind Singh.
3. Km. Laxmi (Minor Aged about 9 yrs) daughter of Govind Singh.
4. Pravendra Singh (Minor aged about 7 yrs) S/o Govind Singh.
5. Km. Mina (Minor Aged about 5 yrs) daughter of Govind Singh.
   Respondents Nos. 2 to 5 minors under the Guardianship of their mother Smt. Sumitra Devi- Respondent No.1.
6. Kushal Singh S/o Raghunath Singh,
   All above residents of Villagae Jagaari, Patti Banal Syun, District Pauri Garhwal (Claimants).
7. United India Insurance Company Ltd. 9 D Astely Hall, Dehradun. … **Respondents.**

**Sri Ram Ji Srivastava learned counsel for the appellants.**
**Sri Arun Mohan Saklani & Sri A.Upadhyay, learned counsel for the claimants-respondents.**
**Sri D.S. Patni learned Counsel for the Insurance Company-respondent No.7.**

**Date May 09, 2006**

**(Hon'ble B.S. Verma, J.)**

This appeal under Section 110-D of the Motor Vehicles Act, 1939 ***( for short the Act)*** has been preferred against the judgment and order dated 13-02-1984 passed by the Motor Accident Claims Tribunal/District Judge, Tehri Garhwal ( ***in short the Tribunal***) in M.A.C. Petition No. 18 of 1983, Smt. Sumitra Devi and others Vs. Bishamber Nath and others, whereby the learned Tribunal awarded compensation of Rs. 87,800/- along with interest @ 6% per annum against all the opposite parties and further ordered that respondent no.3- Insurance Company shall be liable to pay Rs. 50,000/- and the O.P.-appellants shall be liable to pay the

rest of the compensation amount. Aggrieved, the owner and driver of the vehicle-appellants have come up in appeal before this Court.

Relevant facts giving rise to the appeal are that Govind Singh, husband of the claimant Sumitra Devi, aged about 38 years and a mechanic by profession earning Rs. 660/- per month as salary from TICIL Simlasu Tehri, lost his life in a vehicular accident, which occurred on 28-7-1983 at about 12.30 a.m. on Rishikesh-Tehri motor road near Hindola Khal due to rash and negligent driving by the driver of Jeep No. MYE-1416, owned by TICIL and duly insured with United India Insurance Company. Compensation has been claimed to the tune of Rs. 1,67,600/- including the amount of Rs. 15,000/- on the principle of no fault liability by the dependents and legal representatives of the deceased.

The owner and driver of the Jeep contested the claim petition by filing their joint written statement. They have admitted the allegations made in the claim petition and in additional pleas, it was asserted that there was no negligence on the part of the driver of the jeep, rather the accident took place due to heavy rains and dense fog at the spot as a result thereof, the jeep fell in the Khad. It was stated that the road was slippery. It was contented that the vehicle was duly insured, therefore, the compensation is payable by the Insurance Company.

The Insurance Company- OP No.3 filed separate written statement and asserted that the vehicle was comprehensively insured by the insurance company towards third party accident and damages to property but it did not cover the passengers, therefore, the insurer is not liable to pay compensation. It was further asserted that the claim ought to have been preferred under the Workmen’s Compensation Act as the deceased was a workman. It was asserted that the respondent no.2 (owner) had

already deposited a sum of 21,600/- as compensation to be paid to the claimants under the provisions of the aforesaid Act, therefore, claim petition under the Motor Vehicles Act is barred.

The learned Tribunal framed necessary issues in the case and after recording the evidence led by the parties and perusing the same, it was concluded that the accident occurred due to rash and negligent driving by the driver of the Jeep in question and it was held that the driver as well as owner of the Jeep were liable to pay compensation. On the point of insurance of the vehicle, the learned Tribunal came to the conclusion that the Insurance Company was liable to pay compensation to its limited liability. It was further held that the deceased was the employee of the owner and he died due to accidental injuries suffered by him, therefore, the case of the deceased was fully covered under the policy conditions. Ultimately, the claim petition was decreed for compensation of Rs. 87,800/- with interest @ 6% per annum against the appellants as well as insurance company, as mentioned above.

In this appeal, the impugned judgment and award has been assailed mainly on the ground that the findings of the learned Tribunal on the point of negligence is erroneous as well as on the liability of the insurance company to the extent of Rs. 50,000/-.

I have heard learned counsel for the parties and have perused the evidence on record including the lower court record.

It has been vehemently argued by the learned counsel for appellants that there is no evidence to show that the driver of the Jeep was in any way negligent in driving the vehicle, rather the accident occurred due to bad slippery condition of the road due to rains and fog. On the other hand, the learned counsel for the claimant-respondents have urged that the learned Tribunal on the

point of negligence had recorded a concrete finding and accordingly held that the accident occurred due to sole negligence on the part of the driver of the Jeep.

At the outset it may be mentioned that the owner of the vehicle as well as driver have admitted the entire allegations made by the claimant. There is no eye witness to corroborate on the point of negligence. D.W.1 Bishambhar Nath, who was admittedly driving the jeep at the relevant time has appeared in the witness box. In his statement, his deposition before the Tribunal does substantiate the stand taken by the owner and the driver in the written statement. It was the positive stand of these persons that at that time, it was raining heavily and there was fog at the place of accident and the road was slippery. He had denied the suggestion that the road was slippery. He further admitted that though fog was there but the road was easily visible and there was no difficulty in driving the vehicle. D.W.1 has also admitted the fact that the brakes of the vehicle were in proper working condition. It was also admitted that the road at the spot was wide enough. It cannot be disputed that the driver D.W.1 was an interested witness and from the admission made by him in his cross-examination, it leads to an inference that his statement on oath does not substantiate the stand taken by the owner and the driver himself in the written statement. The learned Tribunal in the present case rightly observed that the principle of res-ipsa-loquitur was applicable and has rightly concluded that the accident occurred due to negligence on the part of the driver. The learned Tribunal has discussed this issue at page no. 7 to 12 of the impugned judgment and it is not necessary to reiterate the entire discussion again in this appeal. It is settled law that when a fact is denied by the other party, the burden of proof shifts on the person who denies the same. Having considered the evidence of D.W.1, who was driver of the jeep, it can safely be concluded that had the driver been careful and vigilant at the spot the accident could have been avoided.

It was next argued that the finding of the Tribunal fastening the liability upon the insurer to the extent of Rs. 50,000/- only is erroneous. The learned counsel failed to indicate as to how the finding is not correct. The submission of the learned counsel is not tenable in view of the provisions of Section 95(2)(a) of the Act. I am fortified in my view by the Apex Court Judgment in the case of ***New India Assurance Co. Ltd. Vs. C.M. Jaya and others [(2002) 2 Supreme Court Cases, 278]*** wherein it has been observed that ***"in the case of the Insurance Company not taking any higher liability by accepting a higher premium for payment of compensation to a third party, the insurer would be liable to the extent limited under Section 95(2) of the Act and would not be liable to pay the entire amount.*** The appellant has failed to show that any higher premium was paid by the insured towards third party risk in the present case. In a subsequent case ***"National Insurance Co. Ltd. Vs. Keshav Bahadur and Others" [(2004) 2 S.C.C. Page 370],*** similar view was taken by the Apex Court on this point. Moreover, there is nothing to the contrary in the Insurance Policy filed on record. The Tribunal has elaborately dealt with this point in the impugned judgment and has rightly held that the Insurance Company is liable to pay compensation to the extent of Rs. 50,000/-.

The learned Tribunal has fastened the liability to pay the rest of the compensation upon the owner and driver of the vehicle. In view of the law laid down by the Apex Court in the case of ***Sohan Lal Passi Vs. P.Sesh Reddy and others [(1996)5 S.C.C., Page 21],*** since the fault was committed by the driver of the jeep in the course of his employment, the owner alone shall be liable to pay the compensation.

In the last the only point for determination in this appeal is whether the amount of Rs. 21,600/- allegedly paid by the

owner to the claimants towards compensation shall be adjustable in the compensation. On this point, the Tribunal has recorded a finding on Issue No. 6 that this amount shall be adjustable in the final award. But the concluding part of the judgment is silent on this score. Accordingly I hold that in case that payment of Rs.21,600/- had already been paid to the claimant from the owner under the Workmen's Compensation Act, the same shall be adjustable towards payment of compensation by the owner.

Accordingly, the impugned order deserves to be modified to the extent that the owner of the jeep shall alone be liable to pay the rest of the compensation amount along with interest. The driver of the jeep is absolved from the liability. It is made clear that in case the amount of Rs.21,600/- had actually be paid to the claimants from the side of the owner, the same shall be deducted from the total amount payable by the owner including the interest as awarded by the Tribunal.

The appeal is partly allowed. The impugned order under appeal is modified to the extent that the owner shall be liable to pay the remaining amount of compensation along with the interest, excluding the liability of the insurer, as awarded by Tribunal. The driver-appellant no.2 is absolved from the liability to pay compensation. The amount of Rs. 21,600/- in already paid or deposited towards compensation to be paid to the claimants, the same shall be adjusted from the compensation amount payable by the owner. The rest part of impugned order is maintained. In the circumstances of the case, costs easy.

The amount deposited in compliance with interim order dated 20-4-1984 passed by the Allahabad High Court and if withdrawn by the claimants shall be adjustable towards payment of compensation by the owner-appellant.

R.C.P. **(B.S. Verma, J.)**